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**C. West Virginia's Foster Care System Is Already Shaped by Litigation.**

Finally, the threat of litigation is clearly a driving factor in causing change in West Virginia, as is evidenced by the 2019 Agreement between the U.S. Department of Justice and the West Virginia Department of Health and Human Resources regarding alleged violations of the Americans with Disabilities Act. (J.A. 182-212.) The DOJ found that West Virginia was over-utilizing residential mental health treatment facilities and recommended increased community-based supports for children to prevent unnecessary institutionalization. (*See generally id.*) While implementation of the DOJ Agreement remains ongoing, it illustrates that litigation has a place in reforming West Virginia's broken foster care system and bettering the lives of kids in care.

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<sup>33</sup> Casey Family Programs, *How Did New Jersey Safely Reduce the Number of Children in Congregate Care?* (Sept. 25, 2018), <https://www.casey.org/new-jersey-reduce-congregate-care/>.

## CONCLUSION

As is discussed above, the district court's decision fundamentally rests on an oversimplification as to how foster care systems operate. Institutional reform litigation like this case is needed in West Virginia. Accordingly, the Court should reverse the rulings of the District Court in their entirety and remand this matter for further proceedings.

Dated: November 15, 2021

Respectfully submitted,

*/s/ J. Michael Showalter*

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

No. 21-1868      *Jonathan R., et al. v. Jim Justice, et al.*

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Dated: November 15, 2021

Respectfully submitted,

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